

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD ROSS HANSEN,

Defendant.

NO. CR 18-92RAJ

**GOVERNMENT'S RESPONSE TO
MOTION TO COMPEL PRETRIAL
INTERVIEWS OF CASCADE CAPITAL
GROUP GOVERNMENT WITNESSES
(Dkt. #98)**

Noted: August 23, 2019

I. INTRODUCTION

Defendant Bernard Ross Hansen seeks a Court order compelling five witnesses to submit to pretrial interviews with the defense. *See* Dkt. #98, Motion to Compel Pretrial Interviews of Cascade Capital Group Government Witnesses (hereinafter "Motion to Compel Pretrial Interviews"). Ninth Circuit law is clear that a witness in a criminal case may refuse to participate in a pretrial interview. The motion should be denied.

II. RELEVANT BACKGROUND

A. The Indictment

Defendant Hansen was the former president and CEO of Northwest Territorial Mint (NWTM), a precious metals business based in Federal Way, Washington. Mr. Hansen and the former NWTM vault manager, Diane Erdmann, are charged in

1 a 20-count Indictment with a multi-year scheme to defraud the bullion customers of
 2 NWTM. *See* Indictment, Dkt. #1. Defendants are charged with making material
 3 misrepresentations to NWTM customers in order to obtain the customers' money and in
 4 some cases, the customers' property. Dkt. #1 at 4.

5 **B. The Bankruptcy**

6 On April 1, 2016, NWTM filed a Chapter 11 bankruptcy case in the Western
 7 District of Washington. *See In re Northwest Territorial Mint, LLC, Debtor*, Case No. 16-
 8 11767-CMA. Shortly thereafter, on April 11, 2016, the Bankruptcy Court appointed a
 9 disinterested Bankruptcy Trustee, Mark Calvert, to manage the affairs of the company.
 10 *In re Northwest Territorial Mint*, Case No. 16-11767-CMA at Dkt. #51. As Trustee, Mr.
 11 Calvert employed individuals at various points to assist in his management of NWTM,
 12 including the four individuals listed in the Defendant's Motion. Collectively, the
 13 government's brief will call these witnesses the "Trustee Witnesses."

14 The government will likely call dozens of witnesses at trial, including numerous
 15 former NWTM employees, several victims, as well as the Trustee Witnesses. These
 16 Trustee Witnesses can testify about at least two areas that may be relevant to this case.

17 First, in addition to NWTM employee witnesses, the Trustee Witnesses can testify
 18 about the financial condition of NWTM. As part of his duties as Trustee, Mr. Calvert had
 19 to determine the financial condition of NWTM to decide how to proceed with that
 20 business. Mr. Calvert, or the other Trustee Witnesses, can testify about NWTM's
 21 financial condition as of bankruptcy, including its accounting systems, bank accounts,
 22 and financial reporting (or lack of financial reporting). The Trustee Witnesses can also
 23 testify about the varying amounts of outstanding customer obligations over time and that
 24 NWTM was insolvent by at least 2009.

25 Next, the Trustee witnesses can testify about the inventory of the vaults. Shortly
 26 after Mr. Calvert became the Trustee for NWTM, the NWTM vaults in Federal Way,
 27 Auburn, and Dayton, Nevada, were inventoried. These inventories were conducted by
 28 both Trustee employees and NWTM employees. This inventory showed that, contrary to

the representations made to NWTM customers, Defendants were not safely maintaining the bullion-storage and bullion-lease customers' metals, and that millions of dollars' worth of metals were missing. *See* Indictment at 11-12, 15.

III. RESPONSE TO DEFENDANT'S MOTION

A. The Court should not require pretrial interviews

Both the plaintiff and defendant in a criminal case have the right to interview witnesses before trial. *See United States v. Black*, 767 F.2d 1334, 1337 (9th Cir. 1985), *citing United States v. Cook*, 608 F.2d 1175, 1180 (9th Cir. 1979). The right to access to a witness "exists co-equally with the witnesses' right to refuse to say anything." *Black*, 767 F.2d at 1338 (citations omitted). "The defendant's right of access is not violated when a witness chooses voluntarily not to be interviewed." *Id.* at 1338 (citations omitted). There is no exception for victims or other witnesses that defendants view as key witnesses. *See, e.g., United States v. Bonds*, No. CR14-74JCC, 2014 WL4804500, *7 (W.D. Wash. Sept. 26, 2014) (denying defendant's request for order compelling victim interviews).

In light of this precedent, the Motion to Compel Pretrial Interviews should be denied. The Motion is clear that it is the witnesses, through their counsel, who are refusing to meet with the defense. There is no government interference with the right to access these witnesses, rather, they are choosing "voluntarily not to be interviewed." *Black*, 767 F.2d at 1338. This Court should not intervene in that decision.

B. The Court should not order Rule 15 depositions of government witnesses

Rule 15 of the Federal Rules of Criminal Procedure authorizes pre-trial preservation depositions of witness testimony in certain circumstances. Fed. R. Crim. P. 15. Rule 15 depositions are not allowed for the purposes of discovery. *United States v. Cutler*, 806 F.2d 933, 935-36 (9th Cir. 1986).

It is not clear whether Defendant's Motion seeks Rule 15 depositions. *See* Motion to Compel Pretrial Interviews at 2 ("This motion [is] in keeping with the spirit of Rule 15 of the Federal Rules of Criminal Procedure"); Motion to Compel Pretrial Interviews at 3

(citing authority that Rule 15 depositions should be authorized when “in the interests of justice”). To the extent Defendant seeks Court permission to depose the Trustee witnesses, that request should be denied. Rule 15 contemplates a deposition of a party’s own witness, not an opposing witness, and not when one party is seeking discovery. *See United States v. Fei Ye*, 436 F.3d 1117, 1123 (9th Cir. 2006). Defendant’s purported need for “effective preparation and effective cross-examination” is not a reason for the Court to order depositions in this case. *See Fei Ye*, 436 F.3d at 1123-24 (granting mandamus relief and rescinding district court order that allowed Rule 15 depositions of government witnesses to ensure “fairness and efficiency of the trial process”); *United States v. Postlethwaite*, No. CR12-36JCC, 2012 WL 12874957, *4-5 (W.D. Wash. Oct. 26, 2012) (denying motion to compel witness interviews when defendant argued “the testimony of the witnesses comprises the government’s entire case against [defendant]”).

IV. CONCLUSION

The government respectfully requests that the Court deny Defendant’s Motion to Compel Pretrial Interviews.

Dated this 16th day of August 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2019, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants.

s/ Dru Mercer

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